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October 31, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 18, 2007

Case Number: TSO-0507

This decision concerns the eligibility of XXXXXXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored at this time.

**I. BACKGROUND**

In August 2004, the Individual and his best friend, who was also his roommate, having recently completed an 18-month active duty deployment in Iraq together, returned to college to begin their final semester. DOE Exhibit ("Ex.") 7. Shortly after returning to school, the Individual and his best friend went out for "college night" at a bowling alley where they each had about four or five beers. *Id.* The Individual was driving that night. On their way home, the Individual and his best friend were in a car accident and the best friend died. *Id.* The Individual was not arrested or criminally charged at the time of the accident. *Id.* The Individual was hired by a DOE contractor in September 2004. In December 2004, he learned that criminal charges stemming from the August 2004 accident were about to be filed against him and he informed the local security office (LSO) at his facility of the imminent criminal charges. *Id.*

The Individual was the subject of a personnel security interview (PSI) in April 2005. During the PSI, the Individual discussed the circumstances surrounding the August 2004 accident. *Id.* The Individual stated during the PSI that on the night of the accident he did not feel he was intoxicated. He admitted, however, that he had been drinking and that alcohol was a factor in the accident. *Id.*

Following the PSI, the Individual was referred to a DOE consultant-psychiatrist for an evaluation. The DOE Psychiatrist determined that there was insufficient evidence "to suggest that [the Individual] is a high risk of a lapse of judgment or reliability because of alcohol use." Individual's Ex. E.

In May 2007, the DOE notified the Individual that the August 2004 accident and the resulting criminal charges created security concerns under 10 C.F.R. § 710.8(l). (Criterion L). Notification Letter, May 18, 2007. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual's Letter, May 21, 2007.

The DOE forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The OHA Acting Director appointed me to serve as the hearing officer and a hearing was held in this matter. Both the Individual and the DOE counsel submitted documents, referred to as "Indiv. Ex." and "DOE Ex.," respectively. At the hearing, the Individual, representing himself, presented his own testimony as well as the testimony of his deceased friend's sister, his fiancée, his childhood friend, his mother, and his supervisor. The DOE counsel did not bring forth any witnesses.

## **II. EVIDENCE PRESENTED**

### **A. Documentary Evidence**

The Individual submitted several exhibits into the record. He submitted various documents regarding his military career indicating that he received several commendations and an honorable discharge. Indiv. Exs. A and I. The Individual also submitted copies of his college transcripts and various training certifications he has received while employed by the DOE contractor. Indiv. Exs. B and C. One of the Individual's exhibits consists of eleven character letters submitted to the court during his criminal proceeding speaking to the Individual's general good character and remorse for the accident. Indiv. Ex. F. The letters were written by members of the Individual's family, friends, supervisors, and several members of the Individual's National Guard unit who served with him in Iraq. The Individual submitted the DOE consultant-psychiatrist's report, which states that the Individual is not a high risk for a lapse in judgment or reliability because of alcohol use. Indiv. Ex. E. Finally, the Individual submitted the police report from the accident and court documents related to the criminal proceeding. Indiv. Exs. D and G.

### **B. Hearing Testimony**

#### **1. The Individual**

The Individual stated that he interviewed for his position with the DOE contractor in June 2004, prior to the accident, and was notified that he was hired in September 2004. Tr. at 111-112. He stated that he always received positive feedback on his work from his supervisors. Tr. at 111. The Individual testified that he did not disclose the August 2004 accident immediately when he was hired in September 2004; he informed his management about the accident when he learned that criminal charges were about to be filed against him. Tr. at 115. He stated that he was not trying to hide the accident from his employers, but that he did not want to start his employment by discussing the tragedy. *Id.* The Individual stated that he learned about the charges before they were filed and that he voluntarily turned himself in. Tr. at 117. The Individual pled guilty to vehicular homicide and reckless conduct. Tr. at 126. The Individual stated that his sentence included: four years in the state's Department of Corrections, which was suspended contingent upon his serving 20 consecutive weekends in jail and successfully completing a four-year

supervised probation period and 120 days of community service. Tr. at 130; *see also* Indiv. Ex. D. His driver's license was restricted for three years. Tr. at 130.

The Individual stated that he is about to begin the community service portion of his sentence. He stated that he intended to work with a local, nationally-recognized Boy Scout camp. He stated that he chose the camp because his deceased friend was an Eagle Scout. Tr. at 153. He added, "I just feel I was blessed growing up with good role models and if I got community service I would like to ... help out more than just picking up trash or painting fire hydrants and maybe help somebody else to better themselves. Tr. at 154.

Regarding the accident itself, the Individual acknowledged that he had been drinking that night. Tr. at 117. He stated that on that night he did not believe he was intoxicated. He admitted, however, that he subsequently realized his judgment was "clouded" that night as the result of having consumed alcohol. Tr. at 123. The Individual stated that the night of the accident was the only time he has driven after having consumed enough alcohol to be over the legal limit. Tr. at 134. The Individual stated that he and his deceased friend had gone to college night at a bowling alley and they had been drinking beer. Tr. at 138. Regarding why he chose to drive home that night, the Individual responded, "I just happened to drive that night and we went and we had a few beers ...." Tr. at 141. The Individual also readily admitted that he was speeding that night – "had too fast a car, too young a kid" – and that the alcohol impaired his judgment regarding his speed. *Id.* He stated that he was driving on a road he had traveled several times before he went to Iraq but the traffic pattern had changed while he was overseas. Tr. at 157. According to the Individual, he was speeding, traveling approximately 60 miles per hour in a 30-mile-per-hour zone, and as a result was unable to successfully navigate the unfamiliar traffic pattern. *Id.*

The Individual stated that he does not drink alcohol often. He stated,

I certainly don't drink as much [since the accident], not that I drank a lot beforehand. But I mean I hardly ever drink now besides a special occasion or if we go out to a really nice dinner for a birthday or something. If I'm out with friends or whatnot and I see any of them that has been drinking even try to remotely drive or something, I always try to intervene the best I can.

Tr. at 140. The Individual stated that the last time he consumed alcohol was at his bachelor party one week before the hearing, where he drank less than two beers. Tr. at 137. He stated, "we did have a six pack [of beer] between the five of us." *Id.* According to the Individual, the most alcohol he currently drinks is one or two drinks once or twice a month with dinner. Tr. at 163. The Individual stated that his heaviest period of alcohol consumption was during college, prior to his serving in Iraq. He stated, "being a senior in college ... I recall we wouldn't really drink anything through the week unless we went out and did something special ... But most of the time if it is Saturday and we are going to go out and do something on campus there was usually alcohol around." Tr. at 160-161. He stated that the most he would drink on those occasions was "three or four drinks" and "there would be no driving. There were several night hangouts literally across the street ... that we usually went to." Tr. at 161.

The Individual described the impact of the accident on his life. He stated,

The car accident affected my life, I mean, I couldn't explain it with words if I had to. I lost my best friend. And that is something I have got to live with for the rest of my life ... that car accident will change me forever. There is not a day that won't go by that I don't think about my best friend. But ... as far as judgment and reliability or character, I mean, my loyalty to this country is still the same and I still think I have got the same good judgment I had years ago before that.

Tr. at 130-140. He added, "there is no doubt in my mind if [DOE revokes] my clearance, I'm not going to roll over and play dead. I'm going to go on in a different career field probably and still be a successful person. But [my profession] is in my life, it has been my career and everything else and I just don't, considering what I have done for my country and proven that I am honorable and trustworthy, I just don't see how I can be labeled, I mean I can see with a felony conviction if you just want to look at it from that global of a standpoint, that I'm a security concern ... I submitted my background check for the [state bureau of investigation]. Was there a pattern offense to any of this? No." Tr. at 152-153.

## **2. The Deceased Friend's Sister**

The sister of the Individual's deceased friend (hereinafter "the sister") also testified. She stated that she has known the Individual for six or seven years, since the Individual and her brother joined the same National Guard unit. Tr. at 9-10. She stated,

When I first met [the Individual] we did not live in the same place so I only saw him when I was visiting the military unit, or something like that. And then about six months after I met him he started school ... where my brother and I both attended and he was my brother's roommate. So I saw him quite often because he and my brother were together all the time. And actually for about a year they were my next door neighbors.

Tr. at 10. She stated that she currently does not see the Individual as often because they no longer live in the same place, but she still has frequent contact with him. Tr. at 11. She stated that over the years she has had occasion to drink alcohol with the Individual and that she has seen the Individual intoxicated probably "once or twice" many years ago. *Id.* The sister stated that those occasions where she and the Individual were drinking usually took place at someone's home where they would spend the night. Tr. at 12. She stated that she never saw the Individual drive after becoming intoxicated. *Id.* The sister added, "if we were at somebody's house or at one of our apartments each of us would have a couple of drinks." Tr. at 16. She stated that the Individual "would spend the night with us" rather than drive after having been drinking. Tr. at 16.

The sister stated that she learned of the August 2004 accident from her mother who had received a phone call from the Individual. "[The Individual] actually called my mom from the back of the ambulance and mom called me because we were about two-and-a-half hours away from home and I was in the same town as my brother and [the Individual]." Tr. at 13. She stated that it took

her a bit of time to gather information but she later learned that the Individual was in the hospital and her brother died at the scene of the accident. Tr. at 14. The sister noted that it was not unusual for the Individual and her brother to be out together. She stated,

[T]his was three days into the new school year, they had just returned to college after having been gone for about a year-and-a-half because they were sent overseas to [Iraq]. And they were trying to be normal college students again. They had not had a chance to be a normal college student in a year-and-a-half. They had gone out and gone bowling, which was very common.

Tr. at 15. She stated that she has spoken with the Individual about the accident and that he as “apologized or expressed remorse” each time they have spoken about it. Tr. at 17. She stated,

He has definitely accepted responsibility. He knows that, or from what he has expressed to me, he knows that that night was a very bad night, that stupid decisions were made and he was driving and because he was driving and did so intoxicated that, yes, he is responsible and he has been very remorseful for that fact. Not only did I lose my brother that night, he lost his best friend.

Tr. at 17.

The sister stated that the Individual has “remained a part of our family and helped us through things that we have been doing to remember [my brother].” Tr. at 21. She stated that the Individual also spends much of his free time with his family and his fiancée and that he goes fishing and four-wheeling. Tr. at 22-23. She stated that she never thought the Individual drank too much “because at the point that we were social before the accident and before they left for Iraq, we were just a bunch of college students. We would have a few drinks during finals or something like that, but we were just a bunch of college students.” Tr. at 23. She added that she never believed the Individual’s alcohol consumption to be above the norm. *Id.* The sister stated,

[The Individual] is an absolutely good guy. He is responsible. He does his job well. [The accident] was not a vengeful crime, it was not malicious. It was an accident. And I know that just because he made a mistake this one evening, granted it was a huge mistake and has horrible consequences, I don’t think that affects the way he does his job ... and I really don’t think that because of a stupid mistake one evening that should change his entire career.

Tr. at 19. She added that, other than the night of the accident, she never questioned the Individual’s judgment. Tr. at 22.

### **3. The Individual’s Fiancée**

The Individual’s fiancée stated that she has known the Individual for eight years and they have been together for one year. Tr. at 44. She stated that the Individual told her about the August 2004 accident and the resulting criminal charges soon after they began dating. Tr. at 46. She

stated that she believed the Individual took responsibility for the accident. She added that the Individual remains close to his deceased friend's family and often helps the family with various activities such as construction on their home or moving. Tr. at 47. The Individual's fiancée stated that the Individual never denied that the accident was his fault. She added,

[H]e was in an accident and he has paid the price and it affects his life everyday and it wasn't just that he was in an accident that killed a random person. It was his very best friend and it was not intentional. And he has learned so much from that one night and that will carry through the rest of his life.

Tr. at 54-55. The Individual's fiancée stated that she stood by the Individual and attended his criminal hearing with him. Tr. at 47. Regarding the Individual's sentence, she stated,

[T]hey revoked his driver's license for three years, I believe. He spent the weekends from the end of February, he actually did three-day weekends, he took the initiative to do an extra day, he was only supposed to do two-day weekends, but he took the extra initiative to go ahead and do three-day weekends and he served in jail every weekend until June. He had a couple of weekends that he was off for a surgery and he went back and finished everything out ... There is community service that he is going to start ... He has to do 1000 hours, I believe.

Tr. at 48-49. The Individual's fiancée also stated that she would like to be involved in the Individual's community service in order to support him. Tr. at 49-50.

The Individual's fiancée stated that she has never seen the Individual engage in dangerous or risky behavior since the accident. She stated that she saw him out a few times before they were dating and did not see him consume any alcohol. Tr. at 57. Since they have been together, they spend their spare time outside of work together usually working on their new home or planning their wedding. *Id.* She stated that the Individual also owns his own construction business and devotes much of his time outside of work to that business. Tr. at 60. She added, "[w]e just like spending quality time together ... we are just like any other American couple, we just like to hang out, watch a movie, rent a movie." Tr. at 65.

The Individual's fiancée also testified regarding the Individual's alcohol consumption. She stated that she has seen the Individual consume alcohol, but that she has never seen him "drink to excess or anything of that nature." Tr. at 50. She added, "He is very mild-natured. And he really wants to have his job and he is like me, I mean, he knows that it is a risk to be involved in any activity like that. And we are just happier sitting at home having a night at home or going to a movie ... than going out drinking." *Id.* She also stated that if they do have any alcohol, it is usually only a glass of wine with dinner because one of them is always driving. Tr. at 46. She stated that she has never had any concerns that the Individual had consumed too much alcohol; the most she has seen the Individual drink at a sitting is about two drinks. Tr. at 65.

The Individual's fiancée described him as a very independent person. As an example, she stated that now that his driver's license is restricted, if she or someone else is unavailable to drive him somewhere, he rides his bicycle "rather than impose on anyone if they are busy." Tr. at 62. She

added that her family is aware of the August 2004 accident and its aftermath and that they are very supportive of the Individual. Tr. at 63. Finally, she stated that she has never had occasion to question the Individual's judgment and that she "support[s] him 100 percent in everything he does." Tr. at 66.

#### **4. The Individual's Childhood Friend**

The Individual's friend stated that he has known the Individual for over 20 years. Tr. at 69. He stated that he and the Individual grew up together and that he saw him at least three times a week until the Individual deployed to Iraq for 18 months. Tr. at 70. He added, [the Individual] has been literally my best friend. He is better than a brother to me." *Id.* The friend stated that the activities he and the Individual do together include fishing, four-wheeling, and kayaking. Tr. at 71. He stated that they also attend the same church. Tr. at 76. The friend stated that he currently interacts with the Individual, either on the phone or in person, between ten and 15 hours per week. Tr. at 73. He stated that he has seen the Individual drink. Tr. at 73. He added that he had never seen the Individual drink to the point where he believed the Individual should not be operating a vehicle. Tr. at 74. The friend stated, "we don't make it a habit to go out and drink. We have a lot of cookouts and stuff together, but we don't [often drink]." Tr. at 80-81. He added that alcohol is very seldom present at their gatherings. Tr. at 81. He stated that the last time he saw the Individual drink was the weekend before the hearing at the Individual's bachelor party. He stated, "we went kayaking and there was no alcohol coming down the river or [anything]. But the night before, between all of us, we drank a six pack and this was between five guys ...." Tr. at 79.

The Individual's friend stated that the Individual told him about the August 2004 accident "very shortly after it happened." *Id.* He stated that the Individual was focused on the fact that he had lost his best friend and "the last thing on [the Individual's] mind was being charged with some felony." Tr. at 75. The friend stated that the Individual could not be blackmailed because of the accident. He stated that the Individual did not try to hide it from their friends or their church adding, "it is not a secret to anyone." Tr. at 77-78.

The friend stated that he never questioned the Individual's judgment. Tr. at 85. He added, "I would trust [the Individual] with my life. *Id.*

#### **5. The Individual's Mother**

The Individual's mother stated that she learned of the August 2004 accident almost immediately after it happened because the Individual called her from the scene. Tr. at 94. She stated that she spoke to the Individual "just an hour before the wreck happened and [the Individual and his deceased friend] were just taking a break from studying and they were going to go bowling and it was college night at the bowling alley." Tr. at 96. She stated that the Individual took responsibility for the accident. Tr. at 95. According to the Individual's mother, the accident happened less than 90 days after the Individual and the deceased friend returned from their deployment to Iraq. Tr. at 98. She added that she remains close with the deceased's mother and that the mother calls the Individual "her other son." Tr. at 96-97. She stated that the Individual is very supportive of the deceased's family; he completed projects the deceased started, built the

family's front porch, painted, cleared their hay fields, and donated money anonymously to the college fund set up in the deceased's name. Tr. at 101.

The Individual's mother stated that she has seen the Individual drink, but she never saw him intoxicated and was never concerned about his alcohol use. Tr. at 97, 103. She added, "I think we had a cookout in April and he had a beer with a hamburger." Tr. at 97. She described the Individual as the "most trustworthy" person she knows and stated that, other than the accident, she has never had a reason to question his judgment. Tr. at 100, 102. Finally, she stated that the Individual does not try to keep the accident a secret. Tr. at 104.

## **6. The Individual's Supervisor**

The Individual's supervisor stated that he has known the Individual for three years. Tr. at 27. He stated that he was on the hiring committee when the Individual interviewed for his position and that the Individual was selected because he was well-qualified and had the appropriate background and training. *Id.* The supervisor stated that he was happy with the quality of the Individual's work and that he had no concerns regarding the Individual's "responsibility, reliability, and trustworthiness." Tr. at 28-29. The supervisor stated that he saw the Individual "a couple of times away from the work environment" outside of work when he stopped at the Individual's home to pick up spare lumber that the Individual was giving him. Tr. at 29-30. "I had gone over to his house and, basically, took my trailer and we loaded up some lumber. No different that what he was at work ... Some people, in my years of supervision, when you would see them off the job they were like different people. [The Individual] is not that way. He is the same at home as he is at work." Tr. at 30.

The supervisor stated that he learned of the August 2004 accident within a few months of the beginning of the Individual's employment. Tr. at 36. The Individual informed him of the August 2004 accident when he learned that criminal charges were about to be filed against him. Tr. at 31. The supervisor stated that his opinion of the Individual did not change. Tr. at 36. He stated, "[the Individual] is no different today than when I hired him. I honestly see a person who makes good solid judgments." Tr. at 37. The supervisor stated that if he had known about the accident before he hired the Individual he may have been reluctant to offer him employment because, given the requirements of the position, he would not knowingly hire someone who may have difficulty obtaining a security clearance. Tr. at 40. However, absent any issues regarding a security clearance, he would "absolutely" have hired the Individual even knowing about the accident and its aftermath. Tr. at 41.

## **III. STANDARD OF REVIEW**

The regulations governing the Individual's eligibility for an access authorization, also referred to as a security clearance, are set forth in 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484



U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the DOE may suspend an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.” 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the hearing officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the hearing officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” *Id.* § 710.27(a).

#### IV. ANALYSIS

The derogatory information concerning Criterion L centers on the Individual’s behavior leading to the August 2004 accident and the resulting criminal charges. Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

There is no question that the Individual’s behavior on the night of the August 2004 accident – driving after consuming alcohol – was a significant lapse in judgment and had the most tragic of consequences. The Individual acknowledged that lapse in judgment and admitted that it raised security concerns. In addition, Guideline J of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information indicates that actions resulting criminal charges raise security concerns. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (“the Adjudicative Guidelines”), Guideline J, ¶ 31. Thus, the only issue to be resolved is whether, through the passage of time and other factors, the Individual has met the high burden of mitigating the security concern raised by his lapse in judgment and the consequences of that lapse.

The accident occurred over three years ago, when the Individual was 23 years old and he and his best friend were back in college after recently returning from serving in Iraq. By his own admission, the Individual was “too young a kid” with “too fast a car” at that time. Since then, the Individual has matured and settled down. He is in a very stable relationship, does not often drink alcohol (and if he does, he does not drink to excess), owns his own home and business, and has a strong support network in his family and friends. This was corroborated by the testimony

of the Individual's fiancée, his childhood friend, his mother, and the sister of his deceased friend and I believed they testified honestly and candidly. In addition, the testimony indicates that the Individual remains close to the family of his deceased friend and goes out of his way to help them when necessary. Through his community service, he intends to take a negative situation and help others in need by choosing to work with a Boy Scouts camp.

The Individual has consistently acknowledged his lapse in judgment the night of the accident and has taken full responsibility for the consequences of that lapse. He testified openly and honestly to that effect. His witnesses, including the deceased friend's sister, also testified that the Individual has held himself responsible for the accident, has shown remorse, and has been drastically affected by the accident. The Individual's actions when he learned of the criminal charges – promptly informing his management of the charges and voluntarily turning himself in – and his guilty plea also speak to his acceptance of responsibility for his actions. The Individual has a strong awareness of the effects of his actions on the night of the accident and has clearly demonstrated his remorse, both through his testimony and that of his witnesses.

The record indicates that the Individual does not have a history or pattern of faulty judgment. To the contrary, he is a highly decorated war veteran. The Individual has taken initiative to excel professionally by achieving various training certifications while with DOE. According to his supervisor, the Individual's judgment at work is impeccable. The DOE consultant-psychiatrist determined that the Individual was not a high risk of a lapse of judgment and reliability due to alcohol in the future. Furthermore, each of the witnesses described the Individual as exceptionally trustworthy and as having good judgment. Taken together, this information presents the Individual as a responsible, trustworthy young man with an isolated – albeit devastating – lapse in judgment.

It is evident that the Individual has been profoundly affected by the role that lapse in judgment played in the death of his best friend three years ago. It is clear from the Individual's testimony and that of his witnesses that he carries what happened that night with him constantly. I believe that because of the accident and its consequences, the Individual will be more circumspect in the future and will endeavor not to place himself in a situation where he will exercise such faulty judgment.

Despite this information, after careful reflection on the record in this case, I am unable to conclude that the Individual's clearance should be restored at this time. In personnel security proceedings where an Individual's behavior has called into question his judgment and reliability, our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating those concerns. See *Personnel Security Hearing*, Case No. VSO-0499, 28 DOE ¶ 82,850 (2002). Guideline J of the Adjudicative Guidelines also sets forth various circumstances which may serve to mitigate security concerns raised by criminal behavior. The circumstances include the passage of time, the unlikelihood that the behavior will recur, and remorse. Guideline J, ¶ 32. In this case, the Individual's actions in disclosing the accident and the resulting criminal charges to the LSO, his clear acceptance of responsibility for the accident, and his behavior since the accident are positive steps in beginning to establish a pattern of responsible behavior. On the other hand, although the Individual has completed the required jail time, a significant portion of his sentence remains to be served, including nearly three years of

probation and the bulk of his community service. Given the severity of the Individual's lapse in judgment and the resulting consequences of that lapse, insufficient time has passed for the Individual to have demonstrated a pattern of responsible behavior adequate to mitigate the security concerns in this case. *See Personnel Security Hearing*, Case No. TSO-0505, 29 DOE ¶ \_\_\_\_ (September 25, 2007).

## V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criterion L. I also find insufficient evidence in the record to fully resolve that concern. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's access authorization should not be restored at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: October 31, 2007